



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2019-0315; FRL-9998-90-Region 7]

Air Plan Approval; Missouri; Compliance Monitoring Usage

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a Missouri State Implementation Plan (SIP) revision submission received on February 15, 2019. The submission revises a Missouri SIP approved regulation that establishes alternate monitoring methods for certifying compliance and alternate methods to establish whether a violation has occurred at a source. These revisions are administrative in nature and do not impact the stringency of the SIP or air quality. Approval of these revisions will ensure consistency between state and federally-approved rules. The EPA's approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2019-0315. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Tracey Casburn, Environmental Protection Agency, Region 7 Office, Air Quality and Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551-7016; email address casburn.tracey@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to the EPA.

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I. Background

On June 5, 2019, the EPA proposed approval of revisions to the Missouri SIP in the **Federal Register** that amend a SIP approved rule that establishes alternate monitoring methods for certifying compliance and alternate methods to establish whether a violation has occurred at a source. See 84 FR 26047. The EPA solicited comments on the proposed SIP revision and received one comment.

II. What is Being Addressed in this Document?

The EPA is approving a revision to Missouri's SIP by approving the state's request to revise 10 CSR 10-6.280, *Compliance Monitoring Usage*, received February 15, 2019. The revisions are administrative in nature and do not impact air quality. Specifically, the revisions to the rule: clarify that there are no definitions specific to the rule; add language clarifying the date of an incorporation by reference (IBR) and where the public can get a copy of the IBR; add a state rule to the list of state rules that presumptively identify credible testing, monitoring, or information gathering methods; and make other minor edits. A detailed discussion of the revision was provided in the EPA's June 5, 2019, **Federal Register** document and in a technical support document (TSD) that is available in the docket to this action. See 84 FR 26047.

III. Have the Requirements for Approval of a SIP Revision Been Met?

The state submission has met the public notice requirements for SIP submissions in accordance with code of Federal regulations (CFR) at 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The state provided public notice of the revisions from June 15, 2018, to September 6, 2018, and held a public hearing on August 30, 2018. The state received one comment; the comment was from the EPA and was a general comment regarding SIP revisions. No changes were made to the proposed rule text in response to the EPA's comment. The SIP revision submission met the substantive requirements of the CAA, including section 110 and implementing regulations.

IV. What is the EPA's Response to Comment Received?

Comment: The commenter stated that the EPA was incorrect when it identified 1 CFR part 51 as requiring the addition of the incorporation date and the location where copies can be found when including information by reference. The commenter interpreted 1 CFR part 51 as not applying to states incorporating federal rules and only applying to the federal government incorporating documents into the CFR. The commenter also asserted that by adding a date of incorporation, the State was limiting itself from the most recent version of the CFR. The

commenter suggested that the EPA not approve the IBR revision unless it is able to determine what parts of 40 CFR part 64 could not be used if a revision to 40 CFR part 64 occurred after the state's IBR date of July 1, 2018.

Response: The EPA acknowledges that it could have been clearer in its TSD (in the docket to this notice) regarding the requirements to IBR. The EPA is now providing this additional information to clarify the IBR in this rulemaking. Chapter 536 of the Revised Statutes of the State of Missouri (RSMo) states that "[a]n agency may incorporate by reference rules, regulations, standards, and guidelines of an agency of the United States or a nationally or state-recognized organization or association without publishing the material in full. The reference in the agency rules shall fully identify the incorporated material by publisher, address, and date in order to specify how a copy of the material may be obtained, and shall state that the referenced rule, regulation, standard, or guideline does not include any later amendments or additions". Chapter 643 of RSMo requires the Missouri Air Conservation Commission to adopt regulations in accordance with Chapter 536 of the RSMo. Chapter 643 of the RSMo is incorporated by reference into the SIP at 40 CFR 52.1322(c)(69)(ii)(A). The previous version of this rule did not include a date of the

referenced material, where the material could be obtained, or indicate that the reference did not include any later amendments or additions. By revising the rule to incorporate a date by reference, the Missouri Department of Natural Resources was coming into compliance with its own statute.

Additionally, 1 CFR part 51 requires the Agency to meet certain requirements to incorporate materials, such as state regulations, by reference into the SIP. These requirements include providing an effective date of the material being incorporated. The EPA previously incorporated 10 CSR 10-6.280 *Compliance Monitoring Usage* into the SIP in 2001 (66 FR 27028). This SIP revision updates that incorporation by reference to include the updated effective date. The state rule language limits the incorporated material to the 40 CFR part 64 rule language effective on July 1, 2018. July 1, 2018 is the annual publication date of the CFR. Citations to updates of the federal rule (rule updates are published in the **Federal Register**) are provided in the text of the CFR. The state will not include later amendments to 40 CFR part 64 without first going through the SIP revision process.

V. What Action is the EPA Taking?

We are taking final action to approve the revisions to 10 CSR 10-6.280 *Compliance Monitoring Usage* into the SIP.

VI. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 7 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State implementation plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

¹ 62 FR 27968 (May 22, 1997).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on

tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action

may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: _____

August 26, 2019.

Edward Chu,
Acting Regional Administrator,
Region 7.

For the reasons stated in the preamble, the EPA is amending
40 CFR part 52 as set forth below:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart-AA Missouri

2. In §52.1320, the table in paragraph (c) is amended by
revising entry for "10-6.280" to read as follows:

§52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-Approved Missouri Regulations

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * *				
Chapter 6-Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
* * * * *				
10-6.280	Compliance Monitoring Usage	2/28/2019	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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[FR Doc. 2019-19072 Filed: 9/5/2019 8:45 am; Publication Date: 9/6/2019]